v. *Gass,* 190 N. Y. 323, 83 N. E. 64; *People ex rel. Roosevelt Hospital* v. *Raymond,* — N. Y. —, 87 N. E. 90; *Citizen's Savings Bank* v. *Owensboro,* 173 U. S. 636.

A stockholder is as much bound by a constitutional provision as though it was contained in the articles of incorporation. *Parker* v. *Metropolitan R. R. Co.,* 109 Mass. 506; *Market St. R. Co.* v. *Hellman,* 109 Cal. 571, 42 Pac. 225; *Greenwood* v. *Union Freight R. Co.* and *Hamilton Gaslight & Coke Co.* v. *Hamilton,* (supra).

Under ordinary circumstances the Legislature cannot deprive the stockholder of the right to vote or materially alter the effect of his vote, as the right to vote is a right of property involved in the ownership of the stock. *Stokes* v. *Continental Trust Co.,* 186 N. Y. 285, 78 N. E. 1090, 12 L. R. A. (N. S.) 969. Also see *Talbot J. Taylor & Co.* v. *Southern Pac. Co.,* 122 Fed. 147; *Lucas* v. *Milliken,* 139 Fed. 816; *Blinn* v. *Gillett,* 208 Ill. 473, 70 N. E. 704, 100 Am. St. Rep. 234. In the principal case, however, the original charter authorized the directors by a vote of three-fourths of their number, to enfranchise policy-holders holding not less than $5,000.00 of insurance, so that the change brought about under the act of 1906 is rather of detail than of substance and, though no authority directly in point can be cited, is clearly within the tendency of authorities. In the case of *Maynard* v. *Looker,* 111 Mich. 498, 69 N. W. 929, 56 L. R. A. 947, affirmed 179 U. S. 46, 21 Sup. Ct. 21, 45 L. Ed. 79, the facts were somewhat similar and therein an act, providing for the cumulative voting system in the election of directors, in place of the system whereby each stockholder had a right to one vote for each share of his stock, was held valid. Similarly *Miller* v. *State,* 15 Wall. 478, 21 L. Ed. 98; *Grobe* v. *Erie Co. Mut. Ins. Co.,* 169 N. Y. 613, 62 N. E. 1096; *Hinckley* v. *Schwarszchild & S. Co.,* 86 N. E. 1125; *Wright* v. *Minn. Mut. Life Ins. Co.,* 193 U. S. 657, 24 Sup. Ct. 549, 48 L. Ed. 832; *Polk* v. *Mutual Reserve Fund Life Assoc. of N. Y.,* 207 U. S. 310, 28 Sup. Ct. 65, 52 L. Ed. 222; *Berea College* v. *Commonwealth of Kentucky,* 211 U. S. 45, 29 Sup. Ct. 33.

The final question in the principal case was as to the power to disfranchise the stockholders as to the majority of the directors, and the act of 1906 is itself a sufficient authority for denying the power. The act provides for the enfranchisement of the policy holders but it does not authorize the disfranchisement of the stockholders, hence what was done in that respect was not valid. The consideration that the stockholders would seemingly be in a better position voting for a minority than for all does not affect the case since the mere offering of a better for a poorer condition does not carry with it the necessary acceptance of the person to whom the better position is offered, if he does not want it. The directors had the power to limit the policy holders, but not the stockholders, as the statute does not authorize it.

D. B. S.

CAN A PURCHASER FROM A TENANT ACQUIRE TITLE BY ADVERSE POSSESSION?—In a recent decision the Supreme Court of Wisconsin holds that where a tenant in possession assumes to sell the property of his landlord and thereupon quietly and in accordance with his contract of sale surrenders the pos-

session which he holds by virtue of his tenancy to his vendee, the latter, entering under his deed of conveyance, becomes an adverse occupant without any knowledge or notice to the landlord of his hostile claim. *Illinois Steel Co.* v. *Budzisz et al.* (1909), — Wis. —, 119 N. W. 935. The decision is made in the light of statutory provisions which declare that if one takes possession of realty claiming the same under a written conveyance, as being a conveyance thereof to him, and exclusive of any other right, he becomes an adverse possessor, and that adverse possession for a period of ten years shall constitute a bar to an action for the realty, making the exception, however, that whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord until the expiration of ten years from the termination of the tenancy. §§ 4211, 4212, 4216, Wis. St. 1898.

The general rule of law is that possession however long continued of a tenant whether for years, from year to year, at will, or by sufferance, is not adverse but is in subordination to the title of the landlord, and that all persons claiming under a tenant and deriving their possession from him are precluded from relying upon their possession for the purpose of barring the title of the landlord. 1 AM. & ENG. ENC. OF LAW 811, 1 CYC. 1062. The decision in the principal case refuses to extend the rule further than to the tenant in fact. The Wisconsin statute was borrowed from the New York statute and the rule of the latter state is exactly at variance with the doctrine here pronounced. The rule of the New York court was stated in *Jackson* v. *Davis* (1825) 5 Cow. 123, 15 Am. Dec. 451, that when the relation of landlord and tenant is once established it attaches to all who may succeed to the possession, through or under the tenant, either immediately or remotely. This doctrine has been uniformly upheld in the later cases. *Jackson* v. *Harsen,* 7 Cow. 323, 17 Am. Dec. 517; *Tompkins* v. *Snow,* 63 Barb. 525; *Sands* v. *Hughes,* 53 N. Y. 287; *Jackson* v. *Scissam,* 3 Johns. 499; *Bradt* v. *Church,* 110 N. Y. 537, 18 N. E. 357. It has been held to apply in the case of a grantee of the tenant in fee, though the grantee takes the deed in ignorance of the fact that his grantor stood in the relation of tenant. *Ballow* v. *N. Y. Floating Dry Dock Co.,* 112 N. Y. 263, 19 N. E. 800, 2 L. R. A. 629.

The principle of estoppel applies to the relation between landlord and tenant and those holding under him, and operates in full force to prevent a tenant from violating that contract by which he obtained and holds possession. He cannot change the character of the tenancy by his own act merely so as to enable himself to hold against his landlord, who reposes under the security of the tenancy believing the possession of the tenant to be his own, held under his title and ready to be surrendered by its termination by lapse of time or demand of possession. *Willison* v. *Watkins,* 3 Pet. 43, 7 L. Ed. 596. If a person enters into land under a tenant who is in possession and with his consent, he cannot impeach the title of the landlord. *Harker* v. *Gustin,* 12 N. J. Law 42. In *Phillips* v. *Rothwell,* 4 Bibb. (Ky.) 33, the court held that one who enters upon land as a tenant cannot controvert the title of his landlord and, if a tenant, make a deed of bargain and sale to

another in fee, the alienee would be in no better condition than the tenant. This rule has been applied to sublessees of the tenant. *Brown* v. *Keller,* 32 Ill. 151, 83 Am. Dec. 258; *London etc. R. Co.* v. *West,* L. R. 2, C. P. 553; to assignees of the lease *Tompkins* v. *Snow,* 63 Barb. 525 (supra); *Stagg* v. *Eureka Tanning etc. Co.,* 56 Mo. 317; to heirs of the tenant, *Lewis* v. *Adams,* 61 Ga. 559; to the wife of the tenant living on the premises, *Russell* v. *Erwin,* 38 Ala. 44; or widow of the tenant, *Mitchell* v. *Murphy,* 43 Fed. 425; *Frazer* v. *Naylor,* 1 Metc. (Ky.) 593. Under statutes of the same import as the Wisconsin statute, other states have held that all persons who come in under, or derive possession from, the tenant in any manner, however remotely, are precluded from relying on their possession to bar the landlord. See *Campbell* v. *Shipley,* 41 Md. 81; *Swann* v. *Thayer,* 36 W. Va. 46, 14 S. E. 423; *Ehrman* v. *Mayer,* 57 Md. 612; *Propagation Society* v. *Sharon,* 28 Vt. 603. This also is the English rule. *Saunders* v. *Lord Annesly,* 2 Sch. & Lef. 73.

The whole doctrine of adverse possession rests upon the presumed acquiescence of the party immediately affected by such possession. Therefore it is that when possession of property is originally held and acquired in subordination to the title of the true owner, to constitute the continued possession adverse there must be a disclaimer of title of him from whom the possession was acquired and an actual hostile possession of which he has notice, or which is so open and notorious as to raise a presumption of notice. We are inclined to believe with the dissenting opinion of BARNES, J., in the principal case that "If a tenant who is let into possession of property by the owner for a nominal consideration may the day following convey such property to a party who knows, or ought to know that he has no title and such grantee by entering into possession can at the end of ten years assert absolute title to the property, much fraud and injustice may be practiced."

The decision in the principal case is supported by those of but one state, Pennsylvania, and there they are not harmonious. LANDLORD AND TENANT, CENT. DIG. §§ 199-209. In *Dikeman* v. *Parrish,* 6 Pa. 210, 47 Am. Dec. 455, the rule of the principal case was declared and the decision is approved in *Townsend* v. *Boyd,* 217 Pa. 386, 66 Atl. 1099, 12 L. R. A. (N. S.) 1148. The former decisions of the Wisconsin court do not support this doctrine and the case of *Pulford* v. *Whicher,* 76 Wis. 555, 45 N. W. 418, holding that once the relation of landlord and tenant is established, any person holding through the tenant is bound by the acts and admissions of his predecessor as if they were his own, is directly in conflict.

The foregoing cases show that the rule adopted in the principal case is one lacking in authority and based, as the majority opinion states, on the letter of the statute. The common law rule seems the safer and sounder one, and again to quote from the dissenting opinion, such a decision "places a premium on piracy not warranted by the statute, not sanctioned by the former decisions of this court and certainly not in harmony with the decisions of any other courts in this country, except those of Pennsylvania." L. T. C.